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Before the
Federal Communications Commission
Washington DC 20554

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In the Matter of	)	
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Modernizing the E-rate Program	)	**WC Docket No. 13-184**
for Schools and Libraries	)	
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Comments from the Wisconsin Department of Public Instruction
(Filed September 15, 2013)

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Introduction

The Wisconsin Department of Public Instruction (WDPI, department) is the state's education and library agency. The department has statutory oversight for 426 public school districts and 387 public libraries. We have provided E-rate support to our state's schools and libraries since the program's inception. At the national level, our staff are active in the State E-rate Coordinators' Alliance (SECA) and the American Library Association's E-rate Task Force.

Our department has commented on many E-rate rulemaking notices starting with our first comments submitted in 1996.[1] We appreciate the opportunity to comment on this critical Notice of Proposed Rulemaking (NPRM) too. The department applauds the Commission on the comprehensive nature of this Notice, but with over 600 questions it does pose a challenge to responders. By necessity—and especially because of limited staff resources—we address only those issues and questions we think are of most interest to Wisconsin's school and library communities.

Considering the all encompassing nature of this NPRM and the likelihood the Commission will receive hundreds of comments, we hope at a later date it will consider issuing a Further Notice of Proposed

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[1] Wisconsin Department of Public Instruction comments to the FCC, April 6, 1996. See
http://pld.dpi.wi.gov/pld_fcc_let.

Rulemaking with a narrower scope focusing on its core recommendations based on the comments it receives.

Summary of Comments from the Wisconsin Department of Public Instruction

- We strongly agree with all three goals that the FCC has proposed for the E-rate program.
- We especially endorse goal #1 which acknowledges the critical role the E-rate has to ensure our schools and libraries have access to adequate and affordable broadband connectivity. *To accomplish this we believe the program must be adequately funded.*
- We support the Commission setting broadband speed and cost guidelines, but not mandates.
- We support the changes to dark fiber and the proposal to allow schools and libraries to own their WAN circuits, when it is cost effective to do so.
- While we support the phase-out of some currently eligible services, *doing so will not solve the need for more funding.*
- We support many of the proposals in goals two and three including: More equitable Priority 2 funding, streamlining consortium applications, minimizing review of minimal funding requests, and direct payment to applicants. Yet we are also concerned that some proposals will result in more burdens on applicants and more program complexity—thus violating goal #3 on streaming the program. We note some of these problematic proposals in our comments below.

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Priority Issues for the Wisconsin Department of Public Instruction

Our comments follow the table of contents in the NPRM and we also provide reference to specific paragraphs.

Goal 1. Proposed (Broadband) Measurements (¶20-40)

On the E-rate program's critical broadband goal the NPRM cites two widely publicized bandwidth metrics. First is President Obama's ConnectED initiative which states by 2018 almost all schools (99%) will have at least 100Mbps with a "target" of 1Gbps.[2] Second is the more granular State Education Technology Directors Association (SETDA) recommendation of 1Gbps Internet access per 1,000 users by the 2017-18 school year.[3] The Commission asks if it should adopt the SETDA bandwidth target (¶23). While useful, we do have concerns with adopting a single, nationwide broadband target. Rather than taking a "one size fits all" approach, we think it more important that the E-rate program be *sufficiently*

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[2] *ConnectED: President Obama's Plan for Connecting All Schools to the Digital Age.* (www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf). We think it likely that many schools will need 100Mbps by 2018, and certainly some will need 1Gbps by this date, if not sooner.

[3] *The Broadband Imperative: Recommendations to Address K-12 Educational Infrastructure Needs.* Page 2. 2012. (http://www.setda.org/web/guest/broadbandimperative).

funded to help ensure all schools and libraries have adequate bandwidth—whatever the speed—at affordable costs. If a school needs more than 1Gbps, the E-rate program should support this. If a school finds 500Mbps to be currently sufficient, then this is the need the program should support. We do not think it is a prudent use of limited E-rate funds[4] to pay for bandwidth that is not needed just so a school can claim it meets a federally recommended bandwidth target.

For libraries (¶25) the Commission references the State Library of Kansas broadband capacity tool; a more current source is the library broadband benchmark developed recently by the Edge initiative.[5] Benchmark 9.2 addresses bandwidth and recommends a minimum of 512Kbps and a more optimal 1Mbps for each Internet connected device. (Of interest, assuming each user has an Internet connected device, this latter figure approximates the SETDA recommendation of 1Gbps per 1,000 users by 2017.) But, in parallel with our above comments on school bandwidth, the E-rate needs to support libraries attaining adequate and affordable bandwidth, regardless of speed.

What are the impediments (¶24, 25) to our schools and libraries reaching these bandwidth targets—or from our perspective, reaching the level of bandwidth needed? In Wisconsin, 90% of our public schools have fiber connectivity, thus the primary impediment is not so much infrastructure issues but cost issues. While we have a statewide (BadgerNet) broadband network, the costs for bandwidth on this network are still very high.[6] And, because of state budget constraints, only about 25% of our state's public schools have a subsidized BadgerNet circuit. From a library perspective, over 80% do not have fiber. Thus libraries have both infrastructure issues (i.e., the limited bandwidth of copper connectivity) and cost issues.[7]

On measuring bandwidth, we support an annual or biennial survey of a select number of schools and libraries (¶33) to assess their current broadband connectivity and future broadband needs. A survey,

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[4] We agree with the Commission's long-standing concern that applicants should not request more services ("gold plating") than needed.

[5] See http://www.libraryedge.org. Considering the demand for ever increasing bandwidth, there is realization by all parties involved that such benchmarks must be updated on a regular basis.

[6] See BadgerNet bandwidth costs at http://teach.wisconsin.gov/category.asp?linkcatid=2603&linkid=619&locid=85. The actual costs paid by schools and libraries are much lower because they are subsidized by state and federal (E-rate) funds. (The NPRM's assumption that consortium buying lowers prices is not always true. We are aware of at least one other state where the state's large consortium application resulted in *increased* broadband costs.)

[7] In October 2009 our department filed comments with the Commission as part of the National Broadband Plan's Public Notice #12, *Cost Estimates for Connecting Anchor Institutions To Fiber*. Among various details, the paper cited the average cost ($57,707) to get fiber to 467 Wisconsin schools and libraries as part of a BTOP application. With the NPRM's emphasis on fiber connectivity we encourage Commission staff to review these comments at http://apps.fcc.gov/ecfs//document/view?id=7020243769.

similar to the FCC's 2010 *E-rate Program and Broadband Survey[8]*, can document our above emphasis to focus on ensuring adequate and affordable broadband regardless of speed.

We are concerned that several proposals in the NPRM place bandwidth measurement responsibilities primarily on the school or library. For example, paragraph 34 proposes that schools and libraries have dedicated equipment to measure performance (¶34). We oppose this because of its intrusive nature and because schools and libraries already have dedicated equipment for this—their routers. Internet connected routers can provide bandwidth usage data and a host of related statistics thus there is no need for other special hardware. We suggest the FCC create an ad hoc working group of applicants and state R&E networks to develop specific bandwidth usage metrics. In sum, to answer the question on whether our schools are getting adequate bandwidth at affordable costs, we suggest the following:

- Conduct periodic surveys, like the *E-rate Program and Broadband Survey,* of a select number of applicants. As part of the survey, collect bandwidth usage data based on the FCC's new router bandwidth metrics referenced above.
- Work with several major providers, statewide networks, and state R&E networks and request they provide data on the bandwidth they provide to schools and libraries.

In relation to broadband costs, we support the Commission taking more aggressive actions to ensure providers are offering the "lowest corresponding price" (LCP), which is required by its own regulations (¶39). See our more substantive comments on this issue as referenced in paragraphs 209-210 below.

We strongly oppose linking E-rate to educational achievement (¶40). While we hope the E-rate at least indirectly enhances educational achievement, this not the intent or purpose of the program and there is no reference to "educational achievement" or similar language in the 1996 Telecommunications Act that established the program. On the issue of educational achievement, we think the NPRM itself correctly states the issue: "Because classroom performance is affected by many factors, there are no reliable conclusions to be drawn." We very much agree.

Goal 1, part B. Focusing E-rate Funds on Supporting Broadband to and within Schools and Libraries (¶67-114)

Goal 1, part B1. Funding for Broadband Connections. (¶67-89)

Is fiber generally the most cost effective, future-proof way to deliver high-speed broadband to our schools and libraries (¶67-69)? Our answer is an unequivocal *Yes*. And while smaller libraries and schools may

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[8] See http://ww.fcc.gov/010511_Eratereport.pdf.

not need fiber now, they very likely will in the near future.[9] We also do not think that any Wisconsin schools or libraries are so remote that fiber connectivity will be prohibitively expensive.[10] Very few schools and libraries in our state have long-term IRUs for broadband service. We address this issue below in our comments on WAN and WAN ownership (¶79-82).

The department strongly endorses placing dark fiber on a "level playing field" with lit fiber (¶70-73). This includes allowing modulating electronics and special construction charges—now eligible only for lit fiber—to be eligible for dark fiber too. But we do not think a capital investment percentage cap (25% or otherwise) of the total funding request is warranted and such a cap will have a chilling effect on fiber build-outs.[11] However, we do recommend modifying the current requirement on capital costs exceeding $500,000. We recommend that capital costs to install fiber that are greater than $100,000 *on a per site basis* be amortized over a 4-5 year period.

We strongly support allowing schools and libraries to own their WAN circuits when this is shown to be cost effective (¶79-82). The current prohibition on WAN ownership means schools and libraries may be paying far more annually to lease circuits vs. owning the circuits outright or sharing ownership with other anchor institutions as part of a regional network.[12] The critical issue is defining "cost effectiveness." We use as an example the BTOP funded grant submitted by the University of Wisconsin Extension (UWEX). This grant documented that the return on investment (ROI) for owning fiber was between 3.7 and 5.4 years.[13] In other words, after this time elapsed it was far less expensive for the anchor institutions in the grant—including schools and libraries—to own their own fiber vs. leasing fiber broadband capacity from a commercial provider. Using this as an example, we propose a ROI of 4-5 years be used to as a primary factor in determining whether WAN ownership is cost effective (¶80-81).

Routers are necessary for high-speed broadband connectivity and we recommend that the cost for the Internet connected router be allowed as a Priority 1 discount (¶85). Currently a router[14] qualifies for

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[9] For most traditional phone companies the transition from copper to fiber is often between 15-20Mbps. However, coaxial copper provided by cable companies is capable of speeds much high than 15-25Mbps.

[10] As referenced above, the average cost to get fiber to 467 Wisconsin schools and libraries as part of a BTOP application was $57,707.

[11] We opposed this 25% cap in our March 2004 Comments. See page 7 at: http://apps.fcc.gov/ecfs/document/view?id=6516082304. Special construction costs to get fiber to the school or library property can easily be 4-5 times the annual ongoing costs.

[12] See also our comments below on WANs that serve multiple types of anchor institutions (¶182).

[13] See page 55 in *Building Community Capacity Through Broadband.* Easy Grants ID, 5710. (http://www2.ntia.doc.gov/files/grantees/uofwisconsin_application_redacted.pdf)

[14] Sometimes a device a vendor classifies as a switch can be used as a router. When this occurs, we propose that switches be Priority 1 eligible too.

Priority 1 funding if it meets a set of seven specific conditions.[15] This is a distressing example of program complexity and results in repeated inquiries to applicants and providers by USAC's Program Integrity Assurance (PIA) unit requesting documentation on these seven conditions. Making routers Priority 1 eligible—with no questions asked—supports both high-speed broadband connectivity and goal #3 on program simplicity.

Because the Children's Internet Protection Act (CIPA) is required for obtaining discounts on Internet access and internal connections, we support allowing filtering software to be E-rate eligible (¶86).

As can be seen in the text box, the department highlighted recurring cost issues in our comments to the Commission seventeen years ago.[16] *This remains a critical issue.* Thus we agree with the Commission (¶88-89) that unless ongoing costs for broadband connectivity are reduced substantially, there will be little chance to meet the Commission's

> Ongoing costs are a much more critical issue than initial capital costs. What is the purpose of bringing fiber to a school if it cannot pay the ongoing costs? —1996 WDPI Comments to the FCC.

broadband targets (¶23) or little chance—as we emphasize on page 2—on ensuring adequate bandwidth at affordable costs. We have already made several suggestions above on reducing costs including better enforcement of LCP, dark fiber build-outs, and WAN ownership. To provide more information to applicants on costs, we support the Commission establishing per-megabit price guidelines or targets, but oppose rigid mandates (¶89). There are two sources readily available now that the Commission can use to determine actual bandwidth costs. These sources can then be used to develop the bandwidth guidelines. (1) Information on bandwidth costs is often in the Item 21 information[17] applicants submit to USAC, and (2) the FCC's regulations already mandate that providers retain data on broadband costs they charge schools and libraries (¶197). The Commission should direct USAC to use these sources as primary material to develop broadband cost guidelines available to all applicants and the public. The results can be broken-out in a variety of ways to show costs for various bandwidths by rural and urban locations, costs charged by regional and state networks, etc.

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[15] The seven conditions are articulated in the FCC's August 11, 1999, "Tennessee" decision. See http://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99216.txt.

[16] Wisconsin Department of Public Instruction comments to the FCC, April 6, 1996. See http://pld.dpi.wi.gov/pld_fcc_let.

[17] In our comments on Increasing Transparency (¶191-201), we support making Item 21 information widely available.

Goal 1, part B2. Phasing Down Support for Certain Services (¶90-114)

We have no strong opposition to phasing out support for some services like paging, email, and webhosting, but we do note that doing so will save very little in E-rate funds. *Discontinuing various E-rate eligible services will not solve the program's funding issue.*

The department strongly opposes any changes narrowing the definition of "Educational purposes" (¶99-100). We vividly recall the time before the broader definition was developed in the Second Report and Order (2003) when applicants needed to remove administrative (non-classroom) use of otherwise E-rate eligible services. This often resulted in repeated requests by PIA for applicant documentation related to administrative vs. classroom use. It was a messy and time consuming issue. If the Commission wants to simplify and streamline the program as stated in goal 3, narrowing the definition of "Educational purposes" is moving in the wrong direction. Answering the Commission's own question (¶100) best states our position: "Would placing limits on funding for services that are not directly available to students or patrons be too difficult to monitor or audit or raise cost-allocation challenges?" Our answer: Absolutely!

From a fiscal perspective the $125 million savings from discontinuing support for basic maintenance of internal connections (BMIC) is more substantive (¶101). We support this primarily as a way to make more funding available for initial purchases of Priority 2 services and products. (As we comment below, most Wisconsin schools and libraries receive no Priority 2 funding.)

The issue of support for Plain Old Telephone Service (POTS) has been a topic of some discussion over the past several years (¶106). For many of our smaller libraries and schools E-rate eligibility of POTS is still important. Therefore, instead of phasing out discounts for POTS, we propose phasing in an E-rate funding ceiling of $2,000 per applicant. Such a limit will help many smaller libraries and schools yet still save considerable funds.[18] We strongly oppose eliminating the common components of voice service like call blocking and 800 number services. As acknowledged in the NPRM (¶95), doing this will save very little in funding but implementing this will require applicants to spend considerable time reviewing opaque information on their phone bills trying to determine line-by-line what is, and is not, eligible. This will also dramatically increase PIA inquiries to applicants and likely delay funding approvals. We request that this major violation of goal #3 not be imposed on our schools and libraries.

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[18] As stated in the NPRM, $260 million to 37,000 applicants is now committed to POTS discounts (¶95). Placing a ceiling of $2,000 per applicant means that $74 million will be committed for a savings of $186 million.

Goal 1, part C. Ensuring Equitable Access to Limited E-rate Funds (¶115-162)

Goal 1, part C1. Modifying the Discount Matrix (¶117-125)

On the question of the rural/urban discounts, we support comments in the E-rate *Broadband NPRM* (July 2010) filed by several organizations proposing to move all applicants to the current rural discount rate[19] ¶146). This is a major move towards program simplification.

Goal 1, part C2. Support Based on District-Wide Eligibility and Application by School District (¶126-129)

We support the Commission's proposal that all schools within a school district submit any E-rate applications for Priority 1 or Priority 2 services at the school district level, not by individual school. We think the rationale for this change is well articulated in the NPRM and in the June 2013 White Paper filed by the State E-rate Coordinators Alliance (SECA).

Goal 1, part C5. More Equitable Access to Funding for Internal Broadband Connections (¶143-148)

With a statewide average E-rate discount of 63%, a great majority of Wisconsin's schools and libraries never receive funding for internal connections (Priority 2). Thus we have a strong, vested interest in changing the current broken formula for allocating these funds. We agree with SECA's White Paper that the two-in-five rule should be rescinded and the Commission should move to a rolling funding cycle. We also proposed this type of Priority 2 funding in our comments filed as part of the 2010 *E-rate Broadband NPRM*[20] and our comments included reducing the maximum Priority 2 discount to 70%. We encourage Commission staff to review our 2010 comments on this issue.

The Commission seeks comments on eliminating the distinction between priority one and priority two—a "whole network" approach (¶146). In an ideal world this would be preferable to the current two priority system. But the ideal world requires sufficient program funding—what we call a "whole funding" approach. Without whole funding the Commission itself acknowledges that some way must be found to address funding requests that exceed the funding cap. We do not know how this could be done, other than reverting back to a funding priority system similar to the current one, or setting a lower per

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[19] For the list of organizations who supported this and information on why they did so, see footnote 197 in the NPRM.

[20] See pages 8-9 in 2010 WDPI comments at http://apps.fcc.gov/ecfs/document/view?id=7020521002. We note here that the May 20, 2010 NPRM itself recognized failure of the two-in-five rule. Paragraph 78 states, "The 2-in-5 rule has not served its intended purposes."

pupil/patron amount (¶147). Without further information on how any funding shortfall would be addressed, we cannot endorse eliminating funding priorities at this time.

Goal 1, part C6. Simplified Allocation of Funds to All Schools and Libraries (¶149-162)

We appreciate the Commission being open to a fundamental change in the allocation of E-rate funds by moving—for example—to a per pupil/patron funding formula (¶135). But we find it difficult to support or even offer substantive comments on this when so many variable cost per pupil/patron figures are referenced in the NPRM. To be blunt, if applicants get more funding via a cost per pupil/patron formula, they will support a move in this direction. If they do not, they will oppose it. We do find it ironic that all of the Commission's own questions on such a formulaic approach appear to introduce more complexity into the program, not less (¶159). For example, there is need to consider:

- Rural and high-cost areas
- High poverty areas
- Developing a funding baseline, or not
- School allocation vs. library allocation
- Impact on consortium applications
- Modifying current bidding requirements
- Determining level of local match

We also note that one of the hallmarks and strengths of the current fund allocation methodology is that discounts are based on the actual cost of services. This accommodates the wide variation in costs found in some areas, like Alaska.

We are also very concerned about the impact of a cost per pupil/patron formula on consortium applications at the regional and state levels (¶154). Wisconsin's statewide consortium application for our BadgerNet broadband network includes 960 schools and libraries. For the current 2013 funding year this application represents *40 percent of our state's entire E-rate funding.* Under a cost per pupil/patron formula, is it assumed that schools and libraries will just allocate some of their funding to the state consortium? If so, this is not a viable assumption.

We support a discount matrix based on ability to pay. Therefore, we do not support a flat 25 percent matching requirement (¶156) because it does not account for high poverty vs. affluent school districts and libraries.

Goal 1, part D. Lowering New Build Costs and Identifying Additional Funding to Support Broadband to Schools and Libraries (¶163-176)

We do not think it possible that the proposed reductions in the discount matrix or elimination of eligible services will—by themselves—enable the Commission to meet its proposed broadband connectivity targets (¶172). One only need review USAC's annual fund demand letters to realize that in most years there are $2 requested for every $1 available. The bottom line is that the initial $2.25 billion allocation has been woefully inadequate to fund the documented need of our schools and libraries. And the annual demand actually understates the real demand. That is, most schools and libraries that receive less than a 70% discount never even apply for Priority 2 funding because they know they have no chance of being approved.[21] *A permanent increase in the funding cap is needed and justified.* There is no need to ask the Joint Board for its opinion.

Goal 2. Maximizing the Cost-effectiveness of E-rate Funds (¶177-223)

Goal 2, part B. Increasing Consortium Purchasing (¶179-185)

We strongly support implementing more "consortium-friendly" application processes (¶182). In fact, we posit that currently there are almost no such processes. For example, the basic forms are not designed for large consortia applications. However, much more important—and frustrating—is the seemingly endless and onerous consortium application review process. As of the date these comments are submitted,

> As of August 2013 we are undergoing three very time consuming PIA reviews that go back two years. We spend countless hours working on these reviews which reduce the time we can spend supporting our schools and libraries.
> —WI State Network Office

Wisconsin's statewide consortium applications (TEACH, BEN #199528) for both 2012 and 2013 are still not funded. *There is $30 million for these two applications still awaiting a USAC decision.* In a typical example, Program Integrity Assurance (PIA) reviewers will ask for documentation on why one library has a 70% discount listed on the Form 471 application when the reviewer thinks it should be 60%. In an application requesting over $14.5 million for 960 schools and libraries, such quibbling over an infinitesimally small amount of funding is very frustrating. And very often when minor changes in discounts are made there are *no changes* in the total amount requested which makes the process even more frustrating. Our state network staff spends countless hours addressing this type of mind-numbing

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[21] Of interest, for the 2013 funding year Wisconsin has a total of 2,290 funding requests. But just 47 (2%) of these are for Priority 2 funding. The department generally advises applicants below a 70% discount not to bother filing Priority 2 funding requests. As stated above, we strongly support a revision in Priority 2 funding to ensure that all applicants get some funding.

minutiae. In addition to allocating more staff resources to consortium applications, *if the Commission is serious about encouraging more consortium applications it has to address issues like this*.[22]

In Wisconsin we have several Community Area Networks (CANs) that serve multiple types of anchor institutions (¶182). These networks[23] were formed specifically to address the need for *affordable* high-speed bandwidth. For example, the Chippewa Valley Internetworking Consortium (CINC, http://cincua.org/) was formed in 1999 to provide "Broadband Serving the Public Interest." CINC offers fiber connectivity to over forty community anchors—including schools and libraries—at much lower costs than commercial alternatives. We suggest that the Commission establish a best practices program (¶220) which encourages development of multi-type community anchor consortia to provide high-speed, affordable broadband when other options for doing so are more expensive.

Goal 2, part C. Encouraging Other Types of Bulk Buying Opportunities (¶186-190)

We support efforts by the Commission to encourage schools and libraries to work with state R&E networks, when such networks are available (¶190). The benefits of R&E networks are well articulated in the paper *Connections, Capacity, Community: Exploring Potential Benefits of Research and Education Networks for Public Libraries*.[24] In Wisconsin, 75% of our public schools and 95% of our libraries get their Internet access via WiscNet, our state R&E network. In addition to basic Internet access, WiscNet offers a host of other services like technical support. And from a bandwidth perspective, WiscNet offers a flat fee for Internet access that does not increase as a school or library's bandwidth increases.

Goal 2, part D. Increasing Transparency (¶191-201)

In a general, we certainly support greater transparency in the program. However, when the Commission asks, "At what level of detail should it be reported?" we are very much concerned about the amount of work that will be required by applicants to comply with proposed requirements in this area. We see this as adding complexity to the program in violation of goal #3. For example, on the issue of price transparency we encourage the FCC to require providers, not applicants, to publish prices for services and

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[22] If there continue to be chronic roadblocks to approving our statewide consortium application, our department will likely recommend to our state network office that it cease its statewide application. This means the 960 schools and libraries now on the statewide application will all file their own applications.

[23] Some CANs were funded via a BTOP grant. See our above comments on WAN ownership, ¶79-82.

[24] This 2011 report was commissioned by the Bill & Melinda Gates Foundation. (http://www.tmng.com/knowledge-center/research-reports/research-and-education-networks-and-public-libraries).

make these available to the public via a searchable website.[25] The current requirement (¶197) that providers only make such information available upon request is too cumbersome to be useful. Along with this recommendation is a need to have public access to Item 21 information in a format that makes it searchable. We find these measures likely more useful to applicants than a USAC established office to help applicants identify the best prices for an eligible service.

A USAC employed team of technical experts who could assist applicants in designing cost-effective networks is likely not workable at a national level (¶200). Rather, this work—while often needed—is much better done at the state level. Therefore we propose that the FCC allocate a modest amount of funding to state education agencies to do this work or outsource it to another entity that is familiar with the state's network environment. Recommendation 8.22 in the National Broadband Plan notes that state R&E networks are in a good position to provide network planning and technical support.[26] We very much agree. As referenced above, WiscNet, our R&E network, has been providing technical support for the past twenty years and only needs a modest amount of additional funding to increase its assistance.

Goal 2, part E. Improving the Competitive Bidding Process (¶202-210)

We routinely hear from our schools and libraries that they seldom receive bona fide responses to their Form 470 filings. This problem is especially common in rural communities where there is often just one telecommunications provider. This single provider is often the only Internet provider too. But here again the Commission proposes to impose more regulations—for example having separate requirements if no bids are received—on applicants. We oppose placing more bid requirements on applicants to address failures in the marketplace (¶204). Doing this places more work on applicants and violates goal 3. We support USAC providing applicants with web links to state master contracts[27] and we encourage USAC to work with state E-rate coordinators on implementing this.

We have long supported allowing applicants to use state or local bidding requirements in place of FCC procurement rules (¶206). As we stated in our 2005 comments, "Applicants regularly purchase goods and services in far higher amounts than the funding they get from the E-rate program and such purchases

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[25] We view transparency of prices as part of the Commission's desire to reduce broadband costs. On reducing costs, see our comments on Lowest Corresponding Price (¶209) and our above comments on USAC using provider cost data as required in 54.501(c)(3) to establish per-megabit cost guidelines.

[26] National Broadband Plan. See http://www.broadband.gov. In part in answer to recommendation 8.22 Internet2 created the U.S. UCAN program to assist community anchors with their broadband connectivity issues. See http://www.usucan.org/.

[27] For example, E-rate information on our State of Wisconsin Master Contract for phone service is at http://pld.dpi.wi.gov/pld_phonecontracts.

are made under state or local procurement regulations." [28] Using just state/local procurement rules will eliminate the now sometimes conflicting situation requiring compliance with state/local procurement rules *and* FCC E-rate procurement rules. As an additional check, public schools and libraries are audited on a regular basis to ensure proper use of their funds.

If the FCC does not want to allow use of state or local bidding requirements for all applications, we strongly suggest the Commission implement more narrow regulations allowing exemption from FCC procurement rules (¶206) when a funding request is under $5,000. (State/local procurements rules would still apply.) We made a similar proposal in comments filed with the Commission in March 2004.[29] If

> "There are times when I thought the E-rate reviewers were trying to see if I would just give up and cancel our funding request due to all the paperwork they asked me for." —Wisconsin library director seeking $1,100 in POTS discounts.

this rule were in effect for the current 2013 funding year, 27% of Wisconsin's 678 applicants would be exempt from FCC procurement rules. Using a lower threshold of just $2,500 would still exempt 19% of all our applicants. Even more dramatic, if the $5,000 exemption were based on each funding request, then 64% of all Wisconsin funding requests will be exempt. *We think an exemption for modest funding requests at the applicant or funding request level—linked with an expedited review process—is one of the best ways to streamline the program to the benefit of all parties.*

We also request an exemption from E-rate procurement rules for consortium applications filed by state government agencies. These applications follow much more stringent state procurement regulations. Needing to also follow E-rate procurement rules can cause issues with these complex, often lengthy procurements. For example, it is relatively easy for a school to modify its procurement rules to accommodate the E-rate rules. But for states to do this often requires a statutory change which is unrealistic.

Currently contracts must be signed on or before the date Form 471 is submitted (¶208). We recommend moving this date to before July 1 of the funding year. This extra time will help reduce the number of applicants who are denied or must request waivers because they miss the current contract signing date. (The provider and cost of the service would still need to be selected by the 471 submittal date.)

We briefly commented above (¶39) on the need for better enforcement of the lowest corresponding price (LCP) rule as one way to help ensure the lowest cost for broadband. In reference to the LCP issues raised

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[28] See page 3 in December 2005 WDPI comments at http://apps.fcc.gov/ecfs/document/view?id=6518190423.
[29] See page 5 in March 2004 WDPI comments at http://apps.fcc.gov/ecfs/document/view?id=6516082304.

in paragraphs 209 and 210, we submit that greater clarity in the LCP rule is needed but the purpose of this clarity must be to make the rule more meaningful and useful. If the Commission agrees with the 2010 petition filed by US Telecom and CTIA, this will clarify the LCP rule but it will also make it meaningless (¶210). For example, point #5 in the petition requires a school or library to document they are not receiving the LCP. The great majority of applicants simply lack the resources and expertise to challenge providers on this issue. We believe it is very much the provider's responsibility to show they comply with the LCP and it is USAC's responsibility—not the applicant's—to ascertain and enforce provider compliance. Considering that thousands of applicants do not get any bids for services we do not think that this factor by itself should mandate a LCP review. Doing so will significantly delay funding decisions. Rather, we propose that USAC do "spot checks" of providers to assure compliance and we think that prices above a certain threshold should be "flagged" for further LCP review. This threshold can be the price-per-megabit in the guidelines that we recommend the Commission establish per our above comments (¶88-89). Therefore, we support more aggressive review and enforcement of LCP as referenced in paragraph 309.

Goal 2, part F. Efficient Use of Funding (¶211-216)

While we are concerned about the efficient use of funds, we are more concerned that several of the proposed solutions are simply not workable. Such solutions will place unattainable conditions upon applicants and greatly increase the complexity of the application process, thus violating goal 3. For example, we oppose adopting bright line tests, benchmarks, or formulas for determining the most cost-effective means of meeting an applicant's technology needs.[30] These are too rigid and intrusive (¶213). Of even greater concern is the proposal in paragraph 214 to "Require that an applicant regularly use all of the functions provided by an E-rate supported service." We think it is impossible to define "all of the functions" of any supported application or service. And how could this requirement possibly be enforced, other than a meaningless check box of compliance on an E-rate form?

We are more supportive of the Commission taking actions to encourage applicants to consider the long-term cost of services, especially for broadband connectivity (¶216). On this issue, see our above comments (¶80-81) on determining whether E-rate should support purchasing of WAN broadband circuits.

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[30] This parallels our concerns as stated above (¶89) on setting per-megabit cost maximums.

Goal 2, part G. Broadband Planning and Use (¶217-219)

We support schools and libraries conducting prudent planning and assessment of their current and future needs for broadband connectivity but we *strongly oppose* making this a program requirement. In its Sixth Order the FCC wisely eliminated the need for technology plans for Priority 1 services. We see the questions asked in this section as an attempt—likely unwittingly—by the Commission to reintroduce a thinly disguised technology plan requirement. This adds another level of unneeded complexity that once more violates goal #3.

Goal 3. Streamlining the Administration of the E-rate Program (¶224-269)

The department submitted comments in March 2002 in response to an FCC Notice released in January 2002.[31] In relation to program streamlining, we believe our comments from eleven years ago are as relevant today as they were then:

> The background section of the NPRM states, "Oversight of such a far-reaching program is necessarily intensive and complex." We disagree. It does not, necessarily, have to be this way. But through a myriad of complex rules coupled with a seemingly endless program cycle implementation process, the FCC and the Schools and Libraries Division (SLD) have created a complex program that results in an equally intense and complex oversight process. *The prevailing theme in our response is to simplify and streamline the program in all aspects.* [32]

Goal 3, part A. Electronic Filing of FCC Forms and Correspondence (¶227-231)

We oppose requiring all applicants to file all E-rate forms and related documentation online. There are some applications, especially large consortium applications, which often have hundreds of pages of supporting documentation. It is not always feasible or practical to send this in electronic form. (If current program rules did not require this amount of supporting documentation mandatory, electronic filing would be more viable.)

Goal 3, part C. Speeding Review of Applications, Commitment Decisions, and Funding Disbursement (¶233-247)

The need for most applicants to wait for months after the Form 471 deadline—and often months after July 1—to find out if they have been funded is one of the more frustrating aspects of the program.[33] As we suggest above, one way to speed application approvals is to have an expedited review process for

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[31] *Notice of Proposed Rulemaking and Order in the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, released January 25, 2002. Paragraph 11.

[32] See page 1 in March 2002 WDPI comments at http://apps.fcc.gov/ecfs/document/view?id=6513084380.

[33] As of July 1, 2013, 63% of all Wisconsin funding requests were still pending.

applicants requesting $5,000 or less in E-rate funds. Another recommendation is to have a similar expedited review process for out years of a multi-year contract (¶239). On this latter issue, see our comments below.

We oppose limiting the number of opportunities and length of time applicants have to submit information in response to USAC's requests. (¶237). The current process works reasonably well and adds very little time to the application review process. (It still often takes USAC many weeks or months to make a decision after receiving the requested information from applicants.)

We strongly agree with the FCC's proposal allowing applicants to file a single "evergreen" Form 471 for multi-year contracts and first recommended this in our comments filed in March 2004.[34] However, we would prefer to see the contract length be five years, not the proposed three years. If the Commission adopts a three year maximum, we ask for clarification that applicants with longer contracts need to file another 471 after year three, but they do not have to rebid those contracts. We also oppose a three year contract limit because, as the Commission correctly notes, such a rule will impede IRUs for fiber that are often made for 15-20 years (¶243). (Note, paragraph 244 and 245 refers to IRUs in the context of dark fiber but IRUs can also be signed for lit fiber too. We see no rationale to limit IRUs to just dark fiber.) We also think applicants will understand that multi-year funding commitments are conditional on funds being available in subsequent years (¶239-242).

Goal 3, part D. Simplifying the Eligible Services List (¶248-251)

Two other program streamlining proposals we support are allowing any provider to offer any eligible service to any applicant and eliminating the need for applicants to select a particular category of service (¶250-251). On the latter point, we agree with SECA[35] and think that the still-required CIPA certification can simply be done via a checkbox on Form 486.

Goal 3, part G. Invoicing and Disbursement Process (¶259-265)

We strongly support a revised funding disbursement process that allows applicants who use the BEAR payment process (Form 472) to receive direct reimbursement from USAC (¶261). Removing the need for the service provider to act as a funding "middle man" will simplify the disbursement process for applicants and service providers too. The current process just adds a needless layer of complexity to the program in violation of goal #3.

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[34] See page 3 in March 2004 WDPI comments at http://apps.fcc.gov/ecfs/document/view?id=6516082304.
[35] SECA White Paper. June 2013.

Other Outstanding Issues (¶270-329)

Part A. The Children's Internet Protection Act (¶271-275)

Our position on CIPA compliance is straight-forward and we think comports fully with the law.
- CIPA applies to E-rate funds used for Internet access or internal connections.
- CIPA does not apply to E-rate funds used for telecommunication or telecommunication services.
- CIPA applies to devices owned by the school or library.
- CIPA does not apply to devices owned by students, staff, or library patrons.
- CIPA applies to devices owned by the school or library when such devices are used in an E-rate eligible location.
- CIPA does not apply to devices owned by the school or library when used off-site (e.g., at home).

We believe the phrase in the law that refers to "any of *its* computers with Internet access" [emphasis added] clearly refers to school or library owned devices (¶273). Thus we strongly oppose the broader interpretation referenced in paragraph 274.

While we believe that CIPA applies only in the above circumstances, nothing precludes a school or library from having more restrictive filtering policies. For example, a library can require patron-owned laptops to be filtered when using the library's Wi-Fi Internet connection. Local policies also apply to the example in paragraph 275 of a student using a tablet with an Internet access data plan. In this case the school may have a policy that when the student uses the tablet at home it must be filtered. But both these examples are local decisions, not CIPA requirements.

Part D. Additional Measures to Prevent Waste, Fraud and Abuse (¶294- 318)

We oppose the Commission extending the current five year documentation requirement to ten years (¶295). And we even more strongly oppose requiring applicants to submit any and all documentation related to any and all bids received for services as part of the applicant's Form 471 submittal (¶298). The Commission states that this will "allow USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants." Our position is that this will give USAC carte blanche to ask applicants endless questions on their bidding processes, the vendor selection process, etc. The result will be more applicant frustration and likely delay many funding decisions by weeks or months. Requiring this will be a major imposition on schools and libraries and mires the program in even more complexity. It is a major violation of the program's streamlining and simplicity goal.
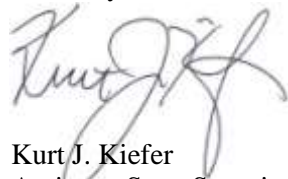
Part E. Wireless Community Hotspots (¶319-323)

We supported language in the Sixth Order's allowing public Internet access at a school during non-classroom hours. However, we do not think the E-rate is the proper program to address the 30% of households which do not have Internet access. We think such an expansion is well beyond the statutory purposes of the program. And from a technical and logistical perspective, we question how it would work. For example, if a school or library cannot request funding for more services (i.e., bandwidth) than are necessary for educational purposes (¶322), will the school or library pay full cost for the added bandwidth needed to support community access? How will this be monitored? Do schools or libraries really want to become de facto Internet service providers with all the responsibilities this entails? We think not. It is more likely that a school or library will contract this service to a third party. If so, can a third party charge households for access? These and many other questions require further review of this proposal.

In Summary

The Wisconsin Department of Public Instruction supports the Commission's efforts to reform the E-rate program so that it can help address the 21st century technology needs of our schools and libraries. We hope the Commission views our comments on this reform effort as constructive and that it will move with all possible speed to adopt many of these reforms by the July 1, 2015, funding year.

Sincerely,

Kurt J. Kiefer
Assistant State Superintendent
Division for Libraries and Technology
Wisconsin Department of Public Instruction